

CHAPTER 3
COMMITTEE PROCEEDINGS ON PETITIONS
FOR INVOLUNTARY BOUNDARY CHANGE

[Prior to 1/9/91, City Development Board [220] Ch 3]

263—3.1(368) Board expands to committee. Upon appointment of the local representatives specified in Iowa Code section 368.14 the board shall become a committee. The parties will be notified that the committee has been established and will be directed to file any motions, pleadings, etc., relative to the contested case with the committee. However, any petitions for rule changes and any petitions for declaratory rulings shall be filed with and acted upon by the board.

This rule is intended to implement Iowa Code section 368.14.

263—3.2(368) Committee chairperson. Prior to a public hearing as provided for in Iowa Code section 368.15 the board shall appoint from within its members a chairperson who shall chair the public hearing. All filings with the committee shall be made upon the chairperson.

This rule is intended to implement Iowa Code section 368.14.

263—3.3(368) Committee meetings. In a contested case, meetings required to dispose of motions, petitions, requests, applications, etc., either before or after the committee conducts the public hearing, are open meetings pursuant to Iowa Code section 21.3. Notice of the time, place, and purpose of the meeting shall be published pursuant to section 362.3. Parties may, prior to commencement of the meeting, file resistances to the motion or petition, and the committee may, in its discretion, allow the parties to present oral arguments relative to the motion or petition. The committee shall file its decision with the parties to the proceedings. This rule shall not apply to applications filed pursuant to rule 3.29(368). This rule shall not apply to rule 3.26(368).

This rule is intended to implement Iowa Code section 368.14.

263—3.4(368) Quorum. A quorum of the committee consists of two board members and one local representative, or if the number of local representatives exceeds one, then two board members and at least one-half of the appointed local representatives are required for a quorum.

This rule is intended to implement Iowa Code section 368.14.

263—3.5(368) Minutes. Minutes of all committee meetings shall be kept pursuant to Iowa Code chapter 21. The minutes of any committee meeting, but not including public hearings held pursuant to Iowa Code section 368.15, shall serve as the record of the meeting. The record of public hearing proceedings shall be in accord with rule 3.22(368).

This rule is intended to implement Iowa Code section 21.3.

263—3.6(368) Ex parte communications. Any committee member who communicates, directly or indirectly, in connection with any issue of fact or law in that contested case with any party or the representative of any party without giving notice and an opportunity to be heard to all parties shall be required to submit the communication if written or a summary of the communication if oral for inclusion in the record of the proceedings.

Any party to a contested case or the representative of any party who communicates, directly or indirectly, in that contested case with any person assigned to hear that case without giving notice and an opportunity to be heard to all parties shall be required to submit the communication if written or a summary of the communication if oral for inclusion in the record of the proceedings. All parties shall be given a copy of the communication and shall have an opportunity to comment on the communication either orally or in writing as the committee so specifies.

Sanctions against the parties or their representatives who communicate with the committee member(s) on any issue of fact or law in a contested case without giving notice and the opportunity to participate to all parties may include a decision against the party on the merits or whatever may be just and equitable.

This rule is intended to implement Iowa Code section 17A.17.

263—3.7(368) Parties to proceedings. Any individuals, agencies or governmental subdivisions of Iowa Code sections 368.11 and 368.15, or any other individual, partnership, corporation, association governmental subdivision, public or private organization, or agency properly seeking and entitled as of right to be admitted as a party is a party to the proceedings. Those seeking to be admitted as parties shall do so in writing to the chairperson and shall include a justification for their request. All parties will be notified as to all other parties to the proceedings.

This rule is intended to implement Iowa Code sections 17A.12 and 368.15.

263—3.8(368) Filing of documents. Once a party has been admitted it shall serve any document it files on the board or committee on all other parties and such filing shall contain proof of service. All parties may request reproducible documents to the proceedings that were filed on the board or committee prior to said parties admittance and shall pay for said documents at a rate of ten cents for each page. After a party has been admitted, any document filed on the board or committee by that party but not served on all other parties may be taken note of by the board or committee and, if so noted, all parties shall be given a copy of the document and shall have an opportunity to comment on said document either orally or in writing as the board or committee so specifies.

Any document filed on the board or committee by those not parties or properly seeking to be admitted as parties may be taken note of by the board or committee and, if so noted, all parties shall be given a copy of the document and shall have an opportunity to comment on said document either orally or in writing as the committee so specifies. Those not parties or properly seeking to be admitted as parties shall receive reproducible documents to the proceedings only upon written request to the committee chairperson; and the cost of the reproduction may be charged to the requesting party at the rate of ten cents for each page.

This rule is intended to implement Iowa Code section 368.15.

263—3.9(368) Additional parties. Where necessary to achieve a more proper decision, the committee may, on its own motion or the motion of any party, order the bringing in of additional parties. When so ordered the committee shall serve upon such additional parties all relevant pleadings and allow such parties a reasonable time to respond thereto where appropriate. If additional parties are admitted after the public hearing all other parties shall be notified and given the opportunity to comment either orally or in writing on the evidence presented by the additional parties as the committee so specifies.

This rule is intended to implement Iowa Code section 368.14.

263—3.10(368) Discovery. Parties involved in involuntary corporate boundary changes shall follow the discovery procedures specified in the Iowa Rules of Civil Procedure.

Interrogatories, depositions and other documents and evidence discovered shall not be submitted to the committee prior to the public hearings. At the public hearings, such evidence may be introduced and entered into the record.

This rule is intended to implement Iowa Code section 17A.13.

263—3.11(368) Prehearing conference. The committee chairperson may hold a prehearing conference at the request of a party or upon the committee chairperson's own initiative for any relevant purpose which furthers the purpose of clarifying the procedure to be followed or of contributing to an equitable hearing process. Notice of said prehearing conference shall be given to all parties to the proceeding.

This rule is intended to implement Iowa Code section 368.15.

263—3.12(368) Informal settlement. Informal settlements are encouraged and must occur prior to the time when the committee has reached a final decision on the petition for involuntary corporate boundary change.

This rule is intended to implement Iowa Code section 17A.10.

263—3.13(368) Continuance. Hearings or proceedings relating to matters which are within the jurisdiction of the committee may be continued by the committee and notice thereof shall be given to all parties. Prior to the commencement of the hearing or other proceeding, a party may, upon written motion to the committee, request a continuance. Copies of said written motion must include proof of service upon all parties to the proceedings. All parties shall have an opportunity to file resistances to said motion and the committee may, in its discretion, allow the parties to present oral arguments relative to the motion pursuant to rule 3.3(368).

A party may, during said hearing or proceeding, but not ex parte, request a continuance. All parties shall have an opportunity to comment on a request for a continuance made at the hearing either orally or in writing as specified by the committee.

This rule is intended to implement Iowa Code section 368.15.

263—3.14(368) Public hearings. Public hearings shall be held on dates and locations determined by the board. However, whenever possible, the public hearings shall be held in or near the locale so affected. The board shall serve written notice, prior to a hearing, upon the parties to the proceedings. Such notice shall include:

1. A statement of the time, place and nature of the hearing;
2. A statement of the legal authority and jurisdiction under which the hearing is to be held;
3. A reference to the particular sections of the statutes and rules involved; and
4. A short and plain statement of the matters asserted.

The board shall, prior to serving notice, designate a suitable place to make the petition or plan available for public inspection. The board shall ensure that the petition or plan is available on or before the date of notice and publication. All notices and publications made pursuant to Iowa Code chapter 368 shall comply with Iowa Code section 362.3. All hearings and meetings of the board and committees shall comply with Iowa Code chapter 21 (open meetings).

This rule is intended to implement Iowa Code section 368.15.

263—3.15(368) Conduct of public hearings. The petitioner(s) shall have the burden of proof and shall present their evidence first. Parties who are neither the petitioner nor opposing parties may appear at a public hearing and present evidence. The committee chairperson shall determine the order in which opposing parties and parties who are neither the petitioner nor opposing parties shall submit evidence.

This rule is intended to implement Iowa Code section 368.15.

263—3.16(368) Failure to appear. If a petitioner fails to appear at a proceeding, the hearing may be dismissed or postponed at the discretion of the committee, or the committee may approve the petition on the basis of verified proof and affidavits, if any, filed in the case, which shall be considered as having been offered in evidence at the hearing by the petitioner.

This rule is intended to implement Iowa Code sections 17A.12 and 368.15.

263—3.17(368) Testimony at hearings. At the public hearing, evidence may be presented in narrative form or question and answer form for each witness at the discretion of the committee chairperson.

This rule is intended to implement Iowa Code section 17A.12.

263—3.18(368) Cross-examination and rebuttal. At the public hearing all parties shall be allowed the opportunity to cross-examine witnesses and be given an opportunity for rebuttal.

This rule is intended to implement Iowa Code section 17A.14.

263—3.19(368) Admission of evidence. Rules of evidence shall be those set forth in the administrative procedure Act. The committee shall observe the rules of privilege recognized by law. It may exclude incompetent, irrelevant, and immaterial evidence.

Any objection with respect to the conduct of the hearing, including an objection to the introduction of evidence, may be stated orally or in writing, accompanied by a short statement of the grounds of such objections, and shall be included in the record. No such objection shall be deemed waived by further participation in the hearing or proceeding.

At any stage of the hearing or after the close of the hearing but prior to decision, the committee may call for further evidence to be presented by the parties concerned. All parties shall be given a copy of said additional evidence and shall have an opportunity to comment on said evidence either orally or in writing as the committee so specifies.

This rule is intended to implement Iowa Code sections 17A.14 and 368.15.

263—3.20(368) Documentary evidence. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. A transcript shall be made only upon application by a party and paid for by that party.

This rule is intended to implement Iowa Code sections 17A.14 and 368.15.

263—3.21(368) Public documents. The committee may take note of appropriate public documents and records of a general scientific or technical nature by notice to all parties involved, limiting the time within which such parties may object to the accuracy of the facts sought to be proved from such documents or records.

This rule is intended to implement Iowa Code sections 17A.14 and 368.15.

263—3.22(368) Record of proceeding. The committee shall prepare an official record of all proceedings, including testimony and exhibits. Testimony may be taken by a mechanical recording device. A transcript shall be furnished upon application, at the expense of the applicant.

This rule is intended to implement Iowa Code sections 17A.12 and 368.15.

263—3.23(368) Witnesses and subpoenas. Subpoenas requiring attendance of witnesses at any designated place of hearing within the state of Iowa shall be issued by the board pursuant to state law. Subpoenas for books, papers, or documents, unless directed by the board, shall be issued only upon application to the board in writing. Application to require parties to produce documentary evidence shall specify the books, papers, or documents required, and the facts to be proven up by them. Witnesses who are subpoenaed are entitled to the same fees as are subpoenaed witnesses in the district court of Iowa, such fees to be paid by the party at whose insistence the testimony is to be given. Service of subpoenas shall be in like manner as provided by law for service of subpoenas in the district court of Iowa.

This rule is intended to implement Iowa Code sections 17A.13 and 368.15.

263—3.24(368) Brief. The committee shall allow ten days after the final public hearing within which the parties may file briefs. A copy of such briefs shall be given to opposing parties. All briefs for presentation to the committee shall be filed with same, accompanied by written evidence of service upon all counsel or parties.

Date of filing is the date on which the brief is deposited for delivery at a United States Post Office depository.

This rule is intended to implement Iowa Code section 368.15.

263—3.25(368) Application for further hearing. Before a final decision is filed, any party thereto desiring further hearing may file an application therefor with the committee. The application shall state the grounds for further hearing; and if it is proposed to produce added testimony, such testimony shall be summarized. No further hearing shall be granted where it is apparent that the added evidence will be merely cumulative. The party applying for further hearing shall transmit such application by certified mail to all parties to the proceedings on the date of filing with the committee. An adverse party

shall have ten days from the date of filing of the application within which to resist thereto. No reply to such resistance shall be permitted. Date of filing is the date on which the application is deposited for delivery at a United States Post Office depository. All applications and resistance to applications shall be accompanied by written evidence of service upon all counsel or parties. The committee may grant or deny such petition with or without hearing or, in its discretion, set a hearing on such application.

This rule is intended to implement Iowa Code sections 17A.16 and 368.15.

263—3.26(368) Committee decision. If, after the final public hearing, a committee meeting is required to approve or disapprove a petition or plan the meeting shall be open pursuant to Iowa Code section 21.3 and notice of the time, place and purpose of the meeting shall be published pursuant to Iowa Code section 362.3. No oral or written testimony will be taken or considered except that the committee shall consider briefs filed pursuant to rule 263—2.11(368).

This rule is intended to implement Iowa Code section 368.19.

263—3.27(368) Amendment of a petition. A petition may be amended any time after a public hearing, but prior to a final committee decision, upon resolution by the committee and notice to all parties to the proceeding. Any proposed amendments shall be served upon all parties of record.

When any party has legal counsel, service upon counsel shall be deemed service upon the party. If the petition or plan is substantially amended the committee shall continue the public hearing to a later date.

This rule is intended to implement Iowa Code section 368.18.

263—3.28(368) Written decision. Within 90 days after the final public hearing, the committee shall approve or disapprove the petition or plan and shall file its written decision for record. The committee's final decision shall include findings of fact and conclusions of law separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. Copies of the written decision shall be transmitted by certified mail to all parties to the proceedings.

Committee decisions, orders, or rulings shall be signed by the chairperson if the chairperson votes with the assenting majority. If the chairperson does not vote with the majority, the members of the assenting majority shall direct a majority member to sign for the committee. Any city development board staff person authorized by the chairperson, may sign decisions, orders, or rulings of the board or committee after the chairperson has reviewed the decision, order or ruling and has given consent to sign. In cases where a board or committee member other than the chairperson is authorized to sign decisions, orders, or rulings, that member may designate the city development board staff to sign after the member authorized to sign has reviewed the decision, order, or ruling and given consent to sign.

This rule is intended to implement Iowa Code sections 17A.16 and 368.19.

263—3.29(368) Rehearing, amendment, vacation, reconsideration, reargument. Within 20 days of the date of issuance of final committee decision or order, any party may apply to the committee for a rehearing, or for an amendment or vacation of the findings of fact, decision or order, or reconsideration or reargument. The application shall set forth grounds upon which it is based, along with the claimed errors. If an application is for amendment of findings of fact, decision or order, the application shall contain the desired proposed amendments, and reasons therefor shall be clearly stated. The party applying for rehearing, amendment, or vacation of the findings shall transmit such application by certified mail to all parties to the proceeding on the date of filing with the committee. An adverse party shall have 10 days from the date of filing of the application within which to resist thereto, and no reply to such resistance shall be permitted. Date of filing is the date on which the application is deposited for delivery at a United States Post Office depository. All applications and resistance to applications shall be accompanied by written evidence of service upon all counsel or parties. The committee may grant or deny such application with or without a hearing on the application. An application for rehearing shall be deemed to have been denied unless the committee grants the application within 20 days after its filing with the committee.

This rule is intended to implement Iowa Code sections 17A.16 and 368.15.

263—3.30(368) Amendment of effective date of order or decision. Petitions for amendment of orders or decisions which seek only a change in their effective date, or in the period of notice or other period of date thereby prescribed, shall be made by petition filed and served in like manner as other petitions under this rule, except that, in case of unforeseen emergency satisfactorily shown by the application, which requires relief within three days of receipt of application, such relief may be sought informally, by telegram or otherwise, upon notice thereof to all parties to the proceeding.

This rule is intended to implement Iowa Code section 368.19.

263—3.31(368) Description of committee's operations. If the board does not dismiss a municipal boundary change petition, the board directs the appointment of local representatives to serve with board members as a committee to consider the petition. Approval by a majority of a committee quorum is necessary for passage of any action. Local representatives shall be qualified electors of the city or territory they represent, or if none of the qualified electors of the territory accept the appointment, or if the territory contains no qualified electors, the representative shall be a qualified elector within the rural area who owns property within the territory, and are selected as follows: (1) from a territory to be incorporated, one representative appointed by the county board of supervisors; (2) from a city to be discontinued, one representative appointed by the city council; (3) from a territory to be annexed to or severed from a city, one representative appointed by the county board of supervisors; (4) from a city to which territory is to be annexed or from which territory is to be severed, one representative appointed by the city council; and (5) from each city to be consolidated, one representative appointed by each city council. Local representative committee appointments shall be made by resolution of the appropriate governing body.

The duties and powers of each committee are: to give proper notice and hold a public hearing on the petition before it; approve any petition which it finds to be in the public interest based upon all relevant information before the committee and which complies with all legal statutes. After the final hearing, the committee shall within 90 days either approve or disapprove the petition or plan as amended and file its decision for record and promptly notify the parties to the proceedings of its decision. The board is then responsible for arranging for a special election on committee approved petitions, making the necessary filings after an election is held, and supervising the procedures necessary to carry out the voter approved petitions.

This rule is intended to implement Iowa Code section 17A.3.

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